IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9764 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANGE FOREST OFFICER - Petitioner(s)

Versus

ALLAHRAKHA NOORMOHOMMAD KARIA - Respondent(s)

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Appearance :
MR IM PANDYA, AGP, for Petitioner(s) : 1,
MR KD VASAVADA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/12/2005

ORAL JUDGMENT

1. This Court, on 5th December 2005, passed the following order:

> “Mr. I.M. Pandya, ld. AGP for the petitioner states that he has not received the papers. As a last chance S.O. To 26th December 2005”.

2. Since the papers were not received the matter was adjourned to today. Even today Mr. Pandya states that he has not received the papers.

3. This petition is directed against the award dated 1st May 2001 passed by the Labour Court, Junagadh, in Reference (LCJ) No.154/1991 whereby the petitioner was directed to reinstate the respondent with continuity of service along with 60% back wages.

4. The short facts of the case are that the respondent workman was engaged on daily wage basis in the petitioner department in the year 1978. The petitioner terminated the services of the respondent on 30.1.1988. The respondent, therefore, raised a dispute which was referred to Labour Court for adjudication and the Labour Court has ultimately passed the award as stated hereinabove.

5. As a result of hearing and perusal of the record it is found that the Labour Court has clearly recorded a finding that there is violation of provisions of section 25G and 25H. Learned counsel for the petitioner is unable to contest this finding of the Labour Court. I am, therefore, in complete agreement with the reasonings adopted and findings recorded by the Labour Court in so far as reinstatement is concerned.

6. However, the Labour Court has awarded back wages without assigning any cogent reasons. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid the award granting back wages is

quashed and set aside. The rest of the award is confirmed. The award of the Labour Court is modified to the aforesaid extent. The respondent will be given benefit continuity of service since no application under section 17B of the Act was preferred. It is clarified that the respondent will not entitled to any monetary benefits during the period in question. The award of the Labour Court, as modified by this Court, will be implemented within a period of ten weeks from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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